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January 10, 2005

TN REGULATORY AUTHORITY
DOCKET ROOM

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VIA HAND DELIVERY

Hon. Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

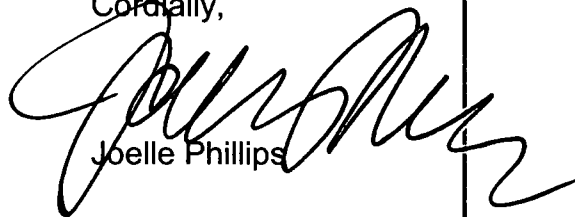
Re: *BellSouth Tariff to Introduce Transit Traffic Service (No. 04-01259)*
Docket No. 04-00380

Dear Chairman Miller:

Enclosed are the original and fourteen copies of BellSouth's *Response to Interventions of Sprint, the CLECs, the Rural ICOs and Citizens Regarding BellSouth's Tariff*.

Copies of the enclosed are being provided to counsel for the intervenors.

Cordially,



Joelle Phillips

JJP:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *BellSouth Tariff to Introduce Transit Traffic Service (No. 04-01259)*

Docket No. 04-00380

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO
INTERVENTIONS OF SPRINT, THE CLECS, THE RURAL ICOS and CITIZENS
REGARDING BELLSOUTH'S TARIFF**

BellSouth Telecommunications, Inc. ("BellSouth") files this *Response* to the petitions of Sprint Communications Company, LP and Sprint Spectrum, LP (jointly "Sprint"), AT&T Communications of the South Central States, LLC, MCImetro Access Transmission Services, LLC, MCI WorldCom Communications, Inc., NuVox Communications, Inc. US LEC of Tennessee, Inc., XO Tennessee Inc., Xspedius Communications, LLC, and Southeastern Competitive Carriers Association (jointly "CLECs"), the Rural Coalition of Small Local Exchange Carriers and Cooperatives ("ICOs"), and Citizens Telecommunications Company of Tennessee, LLC d/b/a Frontier Communications of Tennessee ("Citizens") and respectfully shows the Tennessee Regulatory Authority ("Authority" or "TRA") as follows:

BellSouth filed its tariff regarding transit service in order to address the situation in which a carrier initiates traffic bound for third-party carriers' end users using BellSouth's network to transit such traffic ***and when such parties fail to make contractual arrangements with BellSouth as the transit carrier.*** The tariff does not by its terms affect any party with an agreement governing transit traffic. Moreover, as a result of negotiations with some of the intervening parties, BellSouth has clarified its

intentions that the tariff have no effect on parties who have had transit agreements in the past and seek to negotiate new such agreements. BellSouth is optimistic that, through negotiations and agreed revisions to its tariff, if necessary, BellSouth can resolve the concerns raised by CLECs and Sprint regarding the impact of the tariff on renegotiation of existing transit terms in BellSouth's contracts. BellSouth is continuing to work with those parties to resolve these issues. Likewise, with respect to the petition filed on behalf of Citizens, BellSouth believes, through further discussions, these concerns may also be mutually resolved.

With respect the *Petition to Intervene* filed on behalf of the Rural ICOs, BellSouth respectfully submits that the coalition of ICOs has raised no legitimate issue of law or fact regarding BellSouth's tariff. BellSouth is clearly entitled to receive payment when its network is used to deliver the traffic of another carrier, and parties are not free to avoid payment of such services simply by refusing to negotiate contracts with BellSouth. This tariff addresses that situation. Most importantly, BellSouth's tariff ensures that parties have terms to govern transit traffic in the absence of such agreements. This certainty will promote the public policy of ensuring that calls are completed regardless of the carrier of the party initiating the call or the carrier used by the party being called.

To the extent that any of the ICOs are billed under the tariff in a manner that raises some specific issue, those parties are free to raise such concerns through the TRA's complaint process. At this time, however, the ICOs have raised no issue or even a specific allegation of harm meriting suspension of the tariff under the terms of T.C.A. § 65-5101(c)(3), which require a showing by a complaining party

- (a) of specific harm;
- (b) that the tariff violates a particular law; and
- (c) that the party is likely to prevail on the merits of the complaint. The
ICO's petition neither references this controlling statute nor satisfies
its requirements for the suspension the ICOs seek.

The ICOs have cited no particular law that is arguably violated by this tariff. Moreover, the ICO have no legal right to free use of BellSouth's network for transit purposes. Consequently, the likelihood of success on the merit of their claim is not sufficient to suspend the tariff.

For the foregoing reasons, BellSouth respectfully urges the Authority to reject the *Petition* of the ICOs and to provide BellSouth with time to continue to negotiate with the other parties toward an agreed resolution to the concerns raised regarding the impact on existing or renegotiated contracts.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2005, a copy of the foregoing document was served on the following, via the method indicated:

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